IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

WEST TELEMARKETING LP, a Delaware Limited Partnership,)
)
Plaintiff,) 8:05CV518
)
vs.) ORDER
)
APAC CUSTOMER SERVICES, INC.,)
)
Defendant.)

This matter is before the court on the plaintiff's Motion for Leave to File Amended Complaint (Filing No. 22). The plaintiff attached to the motion an unsigned copy of the proposed amended complaint, in compliance with NECivR 15.1(a). **See** Filing No. 22, Exhibit 1. The plaintiff seeks only to amend the complaint by setting forth the general and limited partners of the defendant for purposes of establishing diversity jurisdiction. The plaintiff represents the defendant does not have any objection to the motion. In fact, the plaintiff is allowed to make the amendment as a matter of course. **See** Fed. R. Civ. P. 15(a). Otherwise, "leave shall be freely given" to amend "when justice so requires." The court finds justice requires such an amendment in this case. Upon consideration,

IT IS ORDERED:

- 1. The plaintiff's Motion for Leave to File Amended Complaint (Filing No. 22) is granted.
- 2. The plaintiff shall have to on or before **February 13, 2006**, to file the amended complaint.

DATED this 2nd day of February, 2006.

BY THE COURT:

s/Thomas D. Thalken United States Magistrate Judge

¹Leave of court is not required for plaintiff to file an amended complaint. Rule 15 (a) provides that "(a) party may amend his pleading once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). "A motion to dismiss is not a 'responsive pleading' for purposes of this rule." **See Winfrey v. Brewer**, 570 F.2d 761, 764 n.4 (8th Cir. 1978); **see Stein v. Royal Bank of Canada**, 239 F.3d 389, 392 (1st Cir. 2001); **see also** Fed. R. Civ. P. 7(a).